

**REPUBLIC SAVINGS BANK (NOW REPUBLIC BANK), PETITIONER, VS.
COURT OF INDUSTRIAL RELATIONS, ROSENDO T. RESUELLO,
BENJAMIN JARA, FLORENCIO ALLASAS, DOMINGO B. JOLA,
DIOSDADO S. MEN...**

G.R. No. 20303. October 31, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

The petitioner Republic Bank has filed a motion for re-consideration of our decision of September 27, 1967.

First. It is argued that as the complaint in this case charges violation of section 4(a)(5) of the Industrial Peace Act, this Court is without power to find the Bank guilty of violation of any other provision of section 4(a), and that as it was in fact held liable not only under paragraph (5) but also under paragraphs (1) and (6) of section 4(a), it was de-nied its constitutional right to due process. The decision has departed from the issue defined in the complaint and answer.

This argument has no merit. The question is whether the Bank committed the act charged in the complaint. If it did, it is of no consequence, either as a matter of procedure or of substantive law, what the act is denominated - whether as a restraint interference or coercion, as some members of the Court believe it to be, or as a discriminatory discharge as other members think it is, or as a refusal to bargain as some other members view it, or even as a combination of any or all of these.[1] For howsoever it may be characterized, the Bank's conduct in discharging the respondent employees constituted an unfair labor practice.

In the leading case of National Labor Relations Board v. Mackay Radio & Telegraph Company,[2] the claim was similarly made that company was found guilty of an unfair labor practice which was not within the issues upon which the case was tried. According to the company, it was summoned to answer a complaint that it discriminated by discharging five strikers, and that after all the evidence was in, the complaint was withdrawn and a new one was filed charging it this time with refusal to re-employ the strikers. But, it was said, when the National Labor Relations Board made its findings it reverted to the original position that what the company did was not a failure to employ but a wrongful discharge.

In rejecting the contention, the United States Supreme Court said:

"The position is highly technical. All parties to the proceeding knew from the outset that the thing complained of was discrimination against certain men by reason of their alleged union activities. . . . The respondent further argues that, when the amended complaint was filed and the original one withdrawn, the charge it had to meet was a refusal to re-employ; that the phrase 're-employ' means 'employ anew;' that if the Board had found a failure to employ the five men because of discrimination forbidden by the Act, the findings would have followed the complaint, whereas the Board, in its conclusions of fact, referred to respondent's action as 'refusal to reinstate to employment' and as a discharge; and the argument is that the findings do not follow the pleading.

“A review of the record shows that at no time during the hearings was there any misunderstanding as to what was the basis of the Board’s complaint. The entire evidence, pro and con, was directed to the question whether, when the strike failed and the men desired to come back and were told that the strike would be forgotten and that they might come back in a body save for eleven men who were singled out for different treatment, six of whom, however, were treated like everyone else, the respondent did in fact discriminate against the remaining five because of union activity. While the respondent was entitled to know the basis of the complaint against it, and to explain its conduct, in an effort to meet that complaint we find from the record that it understood the issue and was afforded full opportunity to justify the action of its officers as innocent rather than discrimination.[3]

Second. Still, it is insisted that because the complaint did not allegation of section 4(a)(1), the Bank did not present evidence - which, it is claimed, it had all the time - to grave that in writing the letter the respondent employees were not at all engaged in a concerted activity but were merely out to aid one who at the time was fighting for the control of the Bank. But even if this case were to be decided strictly on section 4(a)(5) grounds, still the Bank is not excused from its duty to come forward with the evidence it claims it has, to prove that the respondent employees were not in fact engaged in a pro-ected activity. For indeed it is now settled that violations of paragraphs (2), (3), (4), (5), and (6) are also violations of section 4(a)(1), as section 4 is in fact intended to secure the right of self-organization, as declared in section 3, to form, join or assist labor organizations to bargain collectively and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection.[4]

Third. It is further contended that the Bank could not be found guilty of a refusal to bargain because the respondent employees, in the first instance did not follow the grievance procedure outlined in the collective bargaining agreement with the R.S.B. Employees Union, which called for the creation of a union committee to take up grievances with the Bank’s representative.

The argument is fallacious. It assumes the existence of a specific procedure for the handling of grievances when the fact is that no specific procedure governs the present case because the respondent employees do not belong to one union. They are officers of different unions from three bargaining units in the Bank. As a group they are governed by no collective bargaining with the Bank. Yet they were engaged in a concerted activity, interference with which is an unfair labor practice.[5]

Indeed, the finding of refusal to bargain is based on the Bank’s failure to process its own grievance - what it considered was the employees’ libel in giving undue publicity to their griev-ances - through a grievance committee meeting. As stated in the main decision in this case, not even the Bank’s judgment that the respondent employees committed libel could excuse it from its duty to bargain collectively, which includes the adjustment of grievance.

Furthermore, even assuming that the respondent employees failed to observe procedure, the Bank was not thereby justified in unilaterally discharging them. At most such failure could justify the Bank in ignoring their demand.

Fourth. Finally, invoking the ruling in *Philippine Air Lines v. Philippine Air Lines Employees Association*,[6] the Bank pleads for a mitigation of backwages. Indeed, the amounts which the respondent employees have or could have earned during the period for which the backwages are granted should be deducted. With respect to actual earnings, deductions are allowed because of the law’s abhorrence for double compensation, and with respect to money which an employee could have earned, deductions are founded on the employee’s duty to mitigate and diminish his loss.

However, the plea should be addressed to the Court of Industrial Relations when this case is remanded to it for execution of the judgment. The only issue here is the illegality of the dismissal of the employees. As this Court

explained in the PAL case, the question of deduction becomes relevant and material only after the dismissal is finally decided to be illegal.

ACCORDINGLY, the motion for reconsideration is denied.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] Cf. *United States v. Lim San*, 17 Phil. 273, 278-281 (1910).

[2] 304 U.S. 333 (1937).

[3] *Id.* at 349-350.

[4] *NLRB v. Express Publishing Co.*, 312 U.S. 426 (1941).

[5] *NLRB v. Poenix Mutual Life Ins. Co.*, 167 F.2d 983 (7th Cir. 19).

[6] 60 O.G. 8269 (1960).

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